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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,360	11/08/2001	Ansgar Behler	C 2357 COGG	7887

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
	1751

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/005,360	BEHLER ET AL.
	Examiner Brian P Mruk	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 August 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7</u> .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 15 recites the limitation "which corresponds to the alk(en)yl radical represented by R" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. Specifically, the examiner notes that claims 1, 6 and 7, from which claim 15 depends upon, do not recite the radical "R". The examiner suggests that instant claim 15 should be amended to depend from claim 14 to provide proper antecedent basis. Appropriate correction and/or clarification is required.

***Claim Rejections - 35 USC § 102***

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Ansmann et al, U.S. Patent No. 6,235,702.

Ansmann et al, U.S. Patent No. 6,235,702, discloses an aqueous composition comprising 1-99.1% by weight of esters of hydroxy-functionalized carboxylic acids with fatty alcohols containing 6-22 carbon atoms, 0.1-90% by weight of a surfactant, and 0-40% by weight of polyols (see col. 2, lines 8-17). It is further taught by Ansmann et al that a suitable surfactant includes oligoglycosides containing 8-22 carbon atoms (see col. 3, lines 12-14), and that the aqueous composition is made by preparing a mixture of

the components, heating the components, and stirring (see col. 4, line 64-col. 5, line 11). Specifically, note Table 1, Examples R1-R4, which disclose compositions comprising 20-25% by weight of tartaric acid monocetearyl ester or citric acid dicocoalkyl ester, and 9-15% by weight of cocoalkyl glucoside, per the requirements of the instant invention. Therefore, instant claims 1-20 are anticipated by Ansmann et al, U.S. Patent No. 6,235,702.

7. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ansmann et al, WO 97/46209.

Ansmann et al, WO 97/46209 (i.e. which is an equivalent of Ansmann et al, U.S. Patent No. 6,235,702), discloses an aqueous composition comprising 1-99.1% by weight of esters of hydroxy-functionalized carboxylic acids with fatty alcohols containing 6-22 carbon atoms, 0.1-90% by weight of a surfactant, and 0-40% by weight of polyols (see page 2, lines 25-31). It is further taught by Ansmann et al that a suitable surfactant includes oligoglycosides containing 8-22 carbon atoms (see page 4, lines 8-9), and that the aqueous composition is made by preparing a mixture of the components, heating the components, and stirring (see page 6, lines 16-27). Specifically, note Table 1, Examples R1-R4, which disclose compositions comprising 20-25% by weight of tartaric acid monocetearyl ester or citric acid dicocoalkyl ester, and 9-15% by weight of cocoalkyl glucoside, per the requirements of the instant invention. Therefore, instant claims 1-20 are anticipated by Ansmann et al, WO 97/46209.

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8. Claims 1-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Schmid et al, WO 01/21140.

Schmid et al, WO 01/21140, discloses a cosmetic preparation made by mixing an alkyl and/or alkenyl oligoglycoside (see page 2, lines 22-30), and a salt of a hydroxycarboxylic acid partial ester (see page 4, line 7-page 5, line 13), per the requirements of the instant invention. Specifically, note Table 1, Examples 1-4, which discloses compositions comprising 50-90% by weight of oligoglycosides and 10-50% by weight of various sodium salts of hydroxycarboxylic acid esters. Also note the Examples in Table 2. Therefore, instant claims 1-20 are anticipated by Schmid et al, WO 01/21140.

9. Claims 1-3, 5-7, 9-12, 14-15, 17-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Pi Subirana et al, WO 97/46653.

Pi Subirana et al, WO 97/46653, discloses a composition comprising a hydroxycarboxylic acid selected from the group consisting of tartaric acid, malic acid and citric acid with a fatty alcohol polyglycol ether (see page 2, lines 10-17), and a surfactant, such as an alk(en)yl oligoglycoside (see page 4, line 23-page 5, line 13), per the requirements of the instant invention. Specifically, note page 15, Table 3, Examples F1-F3, which disclose compositions comprising 20% by weight of cocoalkyl oligoglycoside and 3% by weight of a hydroxycarboxylic acid ester. Therefore, instant claims 1-3, 5-7, 9-12, 14-15, 17-18 and 20 are anticipated by Pi Subirana et al, WO 97/46653.

10. Claims 1-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Nalborczyk, EP 1,083,217.

Nalborczyk, EP 1,083,217, discloses a composition comprising of a hydroxycarboxylic acid ester (see page 3, lines 34-52), and a surfactant, such as an alk(en)yl oligoglycoside (see page 4, lines 1-3), per the requirements of the instant invention. Specifically, note Table 1, Examples 1-9 and 13, and Table 2, Examples 5-7 and 9-23, which disclose compositions comprising 1-20% by weight of an oligoglycoside and 0.3-6% by weight of a hydroxycarboxylic acid ester. Therefore, instant claims 1-20 are anticipated by Nalborczyk, EP 1,083,217.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*BPM*

Brian Mruk  
August 25, 2003

*Brian P. Mruk*

Brian P. Mruk  
Patent Examiner  
Tech Center 1700